

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION - FLINT

J.D. HEADY & ASSOCIATES, INC.,  
Plaintiff(s),

CASE NO.: 03-CV-60189-AA

vs.

HON. MARIANNE O. BATTANI  
MAG. JUDGE WALLACE CAPEL

AMCAN CONSOLIDATED TECHNOLOGIES CORP.,  
Defendant(s),

and

AMCAN CONSOLIDATED TECHNOLOGIES CORP.,  
Counter-Plaintiff,

vs.

J.D. HEADY & ASSOCIATES, INC., and  
JOSEPH D. HEADY,  
Counter-Defendant.

/

---

**ORDER DENYING DEFENDANT/COUNTER-PLAINTIFF'S  
MOTION TO REOPEN DISCOVERY**

This matter came before the Court for hearing on August 16, 2005, on the Defendant/Counter-Plaintiff's Motion To Reopen Discovery, filed on June 30, 2005, [D/E # 67]. At the time of the initial hearing, the Court took this matter under advisement pending the filing of supplemental briefs and affidavits by the parties to this action.

The Defendant/Counter-Plaintiff in their motion state the since the close of discovery in this matter, it has learned that Plaintiff/Counter-Defendant, Joseph Heady has engaged in additional solicitation of Defendant/Counter-Plaintiff's customers, resulting in financial harm to the Defendant/Counter-Plaintiff. The Defendant/Counter-Plaintiff is seeking to reopen discovery for

the limited purpose of gathering information regarding such additional solicitation by Mr. Heady of the Defendant/Counter-Plaintiff's business customers.

In reviewing the supplemental responses and affidavits, the Court finds that the Defendant/Counter-Plaintiff Amcan has had ample time to pursue discovery in this matter. As noted in the Plaintiff/Counter-Defendant's response, discovery had previously been extended, and has now been closed since September 30, 2004. To reopen discovery at this late date would pose an undue burden upon the Plaintiff/Counter-Defendant since trial is scheduled to begin in November, 2005. More importantly however, a review of the affidavits submitted by counsel in their supplemental responses do not reveal any information that would be new or probative in this matter. The affidavits of Mr. Brian Mackelin and Rodney Crawford supplied by the Defendant/Counter-Plaintiff do not demonstrate that the Plaintiff/Counter-Defendant, Mr. Heady, shared prices of Defendant/Counter-Plaintiff Amcan with his current employer, J.L. French.

The Court having considered the motion, the response thereto, and the supplemental briefs and supporting affidavits, the Defendant/Counter-Plaintiff's Motion To Reopen Discovery is hereby **DENIED.**

**IT IS SO ORDERED.**

The parties are hereby informed that any objections to this order must be filed with the district court within ten days after service, pursuant to Rule 72(a), Federal Rules of Civil Procedure.

**DATED: September 14, 2005**

s/Wallace Capel, Jr.  
**WALLACE CAPEL, JR**  
**United States Magistrate Judge**

**CERTIFICATE OF SERVICE**

I hereby certify that on **September 14, 2005**, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Paul A. Carthew, Catherine T. Dobrowitsky, Lawrence M. Dudek, Jennifer Lossia McManus, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: John J. Cooper, 345 Diversion, Ste. 304, Rochester, MI 48307, Patrick C. Hall, 1111 W. Long Lake Rd., Ste. 202, Troy, MI 48098-6310, Mark E. Hills, William E. Rohn, P.O. Box 352, Grand Rapids, MI 49501-0352

s/ James P. Peltier

James P. Peltier  
Courtroom Deputy Clerk  
U.S. District Court  
600 Church St.  
Flint, MI 48502  
810-341-7850